

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

EVERYTHING CYCLES, INC.,	)	
	)	
Plaintiff,	)	Civ. No. 07-1170-TC
	)	
vs.	)	
	)	
	)	
	)	OPINION AND ORDER
	)	
AMERICAN HONDA MOTOR CO., INC.,	)	
Defendant.	)	

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COFFIN, Magistrate Judge.

Before the court is defendant's motion for summary judgment (#31). For the reasons that follow, summary judgment is granted. Further, as stated below, the court enters judgment declaring that "good cause" supports defendant's termination of its Sales and Service Agreements with plaintiff under.

BACKGROUND

The record discloses the following facts. Plaintiff Everything Cycles, Inc. (ECI), is a motorcycle retail company owned by Randy Wing. ECI entered into Sales and Service Agreements with defendant American Honda Motor Co. (AHM), which permitted plaintiff to sell and service Honda motorcycles, motor

1 scooters, and all-terrain vehicles. Until July 2007, Wing  
2 operated the business in Roseburg, Oregon.

3 The Sales and Service Agreements allow termination under  
4 certain circumstances. AHM may terminate the agreement when a  
5 dealer is accused of a crime that may adversely affect the  
6 reputation of the dealer or AHM, or where the dealer is convicted  
7 of a crime that may adversely affect the goodwill or reputation  
8 of AHM.<sup>1</sup> Def. Ex. 12-14. Termination is also permitted when the  
9 dealer fails to maintain a business license or relocates the  
10 business without AHM's consent. Id.

11 In 2005, Wing was convicted of two counts of theft, one  
12 count of attempted theft, and one count of possession of a stolen  
13 vehicle. The convictions arose from Wing's purchase of a stolen  
14 Suzuki motorcycle on eBay. The record demonstrates that Wing was  
15 not fully forthcoming with the police during the investigations,  
16 and at times, he was dishonest with them concerning his  
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18 <sup>1</sup> The agreements state that termination is permitted where

19 [a]ny accusation or charge of any crime or violation  
20 of any law relating to Dealership Operations by  
21 Dealer . . . is substantiated to its satisfaction or  
22 which, even if unsubstantiated, in American Honda's  
23 judgment may have an adverse effect on the reputation  
24 of Dealer, the Dealership Operations or American  
25 Honda; or any conviction in any court of original  
26 jurisdiction of dealer or of any of the Dealer Owners  
27 or any employee of Dealer for any crime or violation  
28 of any law if, in the opinion of American Honda, such  
conviction or violation may adversely affect the  
conduct of the Dealership Operations or tend to be  
harmful to the goodwill or reputation of American  
Honda, Honda Products, or the Honda Trademarks,  
whether or not such crime or violation of law is  
directly related to or arises out of the Dealership  
Operations[.]

Def. Ex. 12-14.

1 possession of certain parts. He also told an employee to lie to  
2 the police about the location of parts. For sentencing purposes,  
3 the felony theft and possession counts were reduced to  
4 misdemeanors. See Or. Rev. Stat. § 161.705. His convictions  
5 were affirmed after appeal to the Oregon Court of Appeals, and  
6 the Oregon Supreme Court denied review.

7 After his conviction and failed appeal, the City of Roseburg  
8 revoked ECI's business license because the crimes of conviction  
9 were related to his business dealings. The revocation was  
10 sustained on appeal. Wing was permitted an extension of the  
11 revocation enforcement period in order to relocate his business  
12 outside of the city's boundaries. The convictions and business  
13 license revocation attracted media attention, appearing in a  
14 newspaper and on news websites.

15 On May 18, 2007, AHM sent a Notice of Termination to ECI,  
16 citing Wing's conviction and the revocation of his business  
17 license. ECI then applied for approval from AHM to relocate to  
18 Sutherlin, Oregon. In response, AHM stated that the application  
19 would be denied unless ECI remedied the grounds for termination.  
20 ECI relocated to Sutherlin without permission, and AHM then sent  
21 further Notices of Termination based on ECI's unauthorized  
22 relocation.

23 ECI thereafter brought this action, seeking a declaratory  
24 judgment stating that AHM's termination of the Sales and Service  
25 Agreements lacked "good cause" under Or. Rev. Stat. § 650.140.  
26 AHM counterclaims for a judgment declaring that the requirements  
27 of that statute are met, and termination is appropriate. AHM  
28 moves for summary judgment. For the following reasons, the

1 motion is granted.

2  
3 STANDARD

4 Summary judgment is appropriate where "there is no genuine  
5 issue as to any material fact and . . . the moving party is  
6 entitled to a judgment as a matter of law." Fed. R. Civ. P.  
7 56(c). On a motion for summary judgment, all reasonable doubt as  
8 to the existence of a genuine issue of fact is resolved against  
9 the moving party, Hector v. Wiens, 533 F.2d 429, 432 (9th Cir.  
10 1976), and any inferences drawn from the underlying facts are  
11 viewed in the light most favorable to the nonmoving party.  
12 Valadingham v. Bojorquez, 866 F.2d 1135, 1137 (9th Cir. 1989).

13 The initial burden is on the moving party to point out the  
14 absence of any genuine issue of material fact. Once the initial  
15 burden is satisfied, the burden shifts to the opponent to  
16 demonstrate through the production of probative evidence that  
17 there remains an issue of fact to be tried. Celotex Corp. v.  
18 Catrett, 477 U.S. 317 (1986).

19 Rule 56(c) mandates the entry of summary judgment against a  
20 party who fails to make a showing sufficient to establish the  
21 existence of an element essential to that party's case, and on  
22 which that party will bear the burden of proof at trial. In such  
23 a situation, there can be "no genuine issue as to any material  
24 fact," since a complete failure of proof concerning an essential  
25 element of the nonmoving party's case necessarily renders all  
26 other facts immaterial. The moving party is "entitled to a  
27 judgment as a matter of law" because the nonmoving party has  
28 failed to make a sufficient showing on an essential element of

1 her case with respect to which she has the burden of proof. Id.  
2 at 323-24.

### 3 ANALYSIS

4 In this case, the record requires no further development, and  
5 the court's inquiry reduces to this question: Is there "good  
6 cause" for AHM's termination under Or. Rev. Stat. § 650.140?  
7 The statute provides that, "[n]otwithstanding the terms of any  
8 franchise or other agreement," a manufacturer may not terminate  
9 a franchise "without showing good cause," provided that the dealer  
10 protests the termination by filing a complaint within the notice  
11 period provided by the statute.

12 The statute then guides the court's inquiry concerning  
13 whether good cause exists:

14 In determining if good cause exists pursuant to  
15 subsection (1) of this section, the court shall  
16 consider such factors as:

17 (a) The amount of business transacted by the  
18 dealer as compared to the amount of business  
19 available to the dealer.

20 (b) The investment necessarily made and  
21 obligations necessarily incurred by the  
22 franchisee in performance of the franchise.

23 (c) The permanency of the investment.

24 (d) The adequacy of the franchisee's new motor  
25 vehicle sales and service facilities,  
26 equipment and parts.

27 (e) The qualifications of the management,  
28 sales and service personnel to provide the  
consumer with reasonably good service and care  
of new motor vehicles.

(f) The failure of the franchisee to  
substantially comply in good faith with those  
requirements of the franchise that are  
reasonable.

1 Or. Rev. Stat. § 650.140(2). As Judge Aiken has explained, "it  
2 is the court's responsibility to determine whether good cause  
3 exists to terminate a franchise agreement." Cascade Motorsports  
4 of Oregon v. American Suzuki Motor Corp., No. 03-6263-AA, 2004 WL  
5 1839434 at \*6 (D. Or., Aug. 16, 2004).

6 Before engaging in that inquiry, I am called upon to resolve  
7 a question of statutory interpretation. The parties disagree  
8 about whether the court must consider each and every factor  
9 recited in Or. Rev. Stat. § 650.140(2) when determining whether  
10 "good cause" exists, and they dispute whether weight should be  
11 assigned to each factor equally. As AHM argues, in its plainest  
12 sense, the phrase "such factors as" would suggest that the listed  
13 factors include options among many possible considerations that  
14 the court might employ in deciding a particular case. ECI  
15 contends that this court should look to the opinion of Circuit  
16 Joan G. Seitz, which held that each factor requires consideration.  
17 Judge Seitz based her analysis on Welches School Dist. v. Welches  
18 Educ. Ass'n, 842 P.2d 437 (Or. App. 1992), review denied, 854 P.2d  
19 940 (Or. 1993), an appellate opinion that construed similar  
20 language in Or. Rev. Stat. 243.682(1) and concluded that the court  
21 must consider each listed factor. Judge Seitz added that full  
22 consideration of each factor implements the legislature's purpose  
23 in enacting the statute, which is to ensure the availability of  
24 meaningful judicial review of a franchisor's proposed termination  
25 decision. In plaintiff's view, such an interpretation of the  
26 statute would not allow a single "good cause" factor to outweigh  
27 any other.

28 When interpreting an Oregon statute, the court's goal is to

1 give effect to the legislative intent. PGE v. Bureau of Labor and  
2 Industries, 859 P.2d 1143 (Or. 1993). If the terms of the statute  
3 are ambiguous, the court looks to the text of the statute within  
4 the context of the code in order to determine whether the  
5 ambiguity is resolved. If not, the court turns to the legislative  
6 record in order to discern the legislative intent. Id.

7 In this case, the terms of the statute give rise to some  
8 ambiguity concerning the scope of the court's "good cause"  
9 inquiry. On the one hand, the term "shall" indicates a  
10 legislative mandate to the court to consider stated factors.  
11 However, the phrase "such factors as" suggests that the statute  
12 contains a nonexclusive list, implying that other relevant  
13 information may be considered in each fact-laden determination.  
14 Further, the phrase "good cause" sounds in equity. Although the  
15 inquiry is governed by statute, the ultimate determination of the  
16 court concerns whether a termination is fair. Such an inquiry  
17 will necessarily draw from a number of factual considerations,  
18 each carrying its own weight within the larger, comprehensive  
19 analysis.

20 The context of the statute provides little guidance.  
21 Although I understand that the Oregon Court of Appeals considered  
22 a statute containing a similar term in Welches School Dist. v.  
23 Welches Educ. Ass'n, the court did not undertake an analysis of  
24 the terms of the statute and did not provide a holding concerning  
25 statutory interpretation that would be applicable to the issue in  
26 this case. Nor do I find any guidance from the context of  
27 provisions surrounding Or. Rev. Stat. § 650.140.

28 I turn, then, to the legislative record, which is

1 instructive. Or. Rev. Stat. § 650.140 originated as Senate Bill  
2 (SB) 930, proposed in the 1979 Oregon Legislative Assembly. It  
3 was initially vetoed and then enacted in the 1980 Special Session.  
4 According to the Administrator of the Senate Committee on  
5 Transportation, the bill was designed to address

6 the bargaining disparity between national and  
7 international manufacturers distributors and  
8 importers, and local automobile dealers [and]  
9 protect the local automobile dealer from potential  
10 abuses by the manufacturer, distributor, or  
11 importer. It gives the local dealer a chance to  
12 stop, through court action, prohibited conduct, and  
13 to recover damages for actual loss of money.

14 Measure Explanation, Senate Transportation Committee, A-Engrossed  
15 SB 930 (emphasis added).

16 The bill was proposed by the Eugene New Car Dealer  
17 Association to address a number of potential abuses by  
18 franchisors, including coercion of franchisees in illegal  
19 promotions, onerous inventory requirements, underpayment of  
20 franchisees for warranty work, and inhibiting transfer of  
21 franchise ownership. Tape Recording, Senate Transportation  
22 Committee, SB 930, May 23, 1979, Tape 38, Side 2 (statement of  
23 Paul Romain). There is little evidence in the legislative record  
24 that such abuses were frequent in Oregon; rather, the impetus  
25 appears to have stemmed from the concern that such abuses might  
26 occur, and from the enactment of similar protective legislation  
27 in other states. Minutes, House Business and Consumer Affairs  
28 Committee, SB 930, June 19, 1979, 4 (dialogue between Rep. Lombard  
and General Motors Attorney John Wilson).

Among those concerns was unfair termination of a franchise  
agreement. The bill's chief proponent, Paul Romain, representing



1 the Oregon Automobile Dealers Association, explained that  
2 protection from "arbitrary" termination of franchise agreements  
3 was appropriate because franchisees often enjoyed little  
4 bargaining power when negotiating the agreements and stood to lose  
5 significant investments into the franchise. Tape Recording,  
6 Senate Transportation Committee, SB 930, May 23, 1979 Tape 38,  
7 Side 2 (statement of Paul Romain). In order to preclude such  
8 situations, SB 930 included the opportunity for a franchisee to  
9 seek a judicial determination of whether "good cause" exists for  
10 termination.

11 Much of what can be discerned about the legislative intent  
12 for the court's role in determining "good cause" derives from an  
13 exchange between Romain and the members of the Senate  
14 Transportation Committee in a May 23, 1979 hearing.<sup>2</sup> At the  
15 hearing, Romain assured the committee that his client's intent was  
16 not to institute a complicated bureaucracy for governing franchise  
17 agreements, but to give dealers certain procedural protections  
18 that would guard against unfair practices that might result from  
19 an imbalance of bargaining power. Id.

20 Concerning the purpose of what would become Or. Rev. Stat  
21 § 650.140(2), Romain explained, "if the dealer believes that he's  
22 being taken by the manufacturer . . . he can go into court and  
23 enjoin the activity and the court will decide based on standards  
24 we have set out as examples, not exclusive standards, will decide

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26 <sup>2</sup>The version of the provision discussed at the phase of the  
27 legislative process was largely similar to the provision later  
28 enacted; subsequently, the text of current Or. Rev. Stat. §  
650.140(3), the procedures governing the dealer's invocation of the  
court's review, were added. See Minutes, Senate Transportation  
Committee, June 6, 1979, 2.

1 if there is cause to remove it." Id. (emphasis added). When  
 2 asked by Senator Day about the meaning of "good cause," Romain  
 3 explained that the term required a review of the circumstances of  
 4 the agreement, which includes the listed factors and other  
 5 relevant considerations. The review was designed to deter  
 6 coercive practices that could result from an imbalance of  
 7 bargaining power:

8  
 9 The term "good cause" is, as you know from dealing with  
 10 legislation all the time, is a very common word in  
 11 statutes. Basically, what we are trying to do . . . is  
 12 set out some guidelines for the court to use in  
 13 determining good cause. We don't want to limit the  
 14 court to this [list of factors]. We just want to tell  
 15 the court basically what we're thinking about . . .  
 16 look at the permanency of the investment, look at the  
 17 business transacted by the dealer, look at the  
 18 obligations incurred, look at the adequacy of the  
 19 facilities that the franchisee has, the qualifications  
 20 of the management, service that he is providing, the  
 21 failure of the franchisee to substantially comply in  
 22 good faith with the requirements of the franchise that  
 23 are reasonable and material . . . in other words, what  
 24 we want you to do in court is look at the total  
 25 picture: Is this person complying with the franchise  
 26 agreement, are they servicing the public, and look at  
 27 all that, look at it, before you just arbitrarily allow  
 28 a manufacturer [to cancel] because the manufacturer is  
 big, and because the manufacturer is big, the dealer is  
 not able to get these things into a franchise  
 agreement[.]

21 Id. (emphasis added). Romain further emphasized that the factors  
 22 listed in Or. Rev. Stat. § 650.140(2) provide guidelines of the  
 23 courts inquiry and are nonexclusive:

24 [Or. Rev. Stat. § 650.140(2) sets] guidelines  
 25 for a court to use in determining what "good  
 26 cause" is. Most of your statutes do not even go  
 27 that far. Most of your statutes just say, "good  
 28 cause," period. But what we're saying is the  
 legislature should give the court some  
 guidelines, and when you're talking about "good  
 cause," while it's a business transaction, and

1        you shouldn't have to lay out everything in the  
 2        statute because there are many variables that  
 3        come in all the time, the court should consider  
       at least what we're talking about in [Or. Rev.  
       Stat. § 650.140(2)].

4        Id. (emphasis added). Romain also explained that the list of  
 5        considerations was "basically taken" from statutes in California  
 6        and Texas, and were included because such considerations would be  
 7        relevant in Oregon business as well. Id.<sup>3</sup> When asked by Senator  
 8        Khafoury whether the motivation of the franchisor is relevant to  
 9        the court's inquiry, Romain replied, "motivation of the  
 10       manufacturer I think is one that the court can consider. The  
 11       court is not precluded from considering that." Id. Thus, when  
 12       read in the context of the statute's broader purpose, it is clear  
 13       that whether a franchisor's motivations stem from abusive or  
 14       coercive dealings can be relevant to the court's "good cause"  
 15       inquiry.

16       A Eugene, Oregon car dealer, Mr. Huling,<sup>4</sup> also testified at  
 17       the same hearing. Summarizing his position, he explained that the  
 18       protections were needed to protect against potential abuses that  
 19       might result from an imbalance of bargaining power: "Basically,  
 20       what we are looking for is more of a bilateral agreement with the  
 21       manufacturer instead of unilateral . . . we'd like our little day  
 22       \_\_\_\_\_

23       <sup>3</sup>In a later hearing, Representative Lombard observed that the  
 24       California statute required the "good cause" determination to occur  
 25       in an administrative agency, rather than in a court, but commented  
 26       that the court venue was not problematic because the court's  
 27       determination would be guided by the statutory factors in Or. Rev.  
 28       Stat. § 650.140(2). Tape Recording, House Business and Consumer  
       Affairs Committee, SB 930, June 19, 1979, Tape 28, Side 1  
       (statement of Rep. Lombard).

<sup>4</sup>No first name for. Mr Huling was cited in the legislative  
 record.

1 in court once in a while." Tape Recording, Senate Transportation  
2 Committee, SB 930, May 23, 1979, Tape 38, Side 2 (statement of Mr.  
3 Huling) (emphasis added).

4 The provision was adopted by the Committee on June 6, 1979,  
5 after an amendment added at the suggestion of Lee Ridgeway of  
6 General Motors, which requires a dealer to file a complaint to  
7 initiate a "good cause" review of a franchisor's termination  
8 decision. Minutes, Senate Transportation Committee, June 6,  
9 1979, 2; Testimony, Senate Transportation Committee, SB 930, May  
10 23, 1979, Ex. D (statement of Lee Ridgeway).

11 The bill was then forwarded to the House Business and  
12 Consumer Affairs Committee. Romain again reviewed the purpose of  
13 the bill's components, and explained the "good cause" requirement  
14 in this way:

15 The dealer should be allowed a day in court as his  
16 expense to require the manufacturer to show that  
17 there is some good cause to terminate the franchise,  
18 especially when a dealer has put so much time, so  
19 much effort [into a franchise]. We try to set out  
20 in subsection 2 general standards for a court to  
21 look at in determining if there is good cause.

22 Tape Recording, House Business and Consumer Affairs Committee, SB  
23 930, June 19, 1979, Tape 28, Side 1 (statement of Paul Romain).

24 Romain then noted that the provisions reflected amendments  
25 made in consultation with the bill's primary opponents, agents of  
26 General Motors who represented interests of franchisors. Id. At  
27 that hearing, Lee Ridgeway of General Motors testified that he did  
28 not know how the concern about inequitable terminations arose in  
Oregon and informed the committee, "We don't like to terminate  
dealers. That is not what we're in business to do." He explained

1 that terminations were infrequent at GM, occurring in only 12 of  
2 13,000 cases over the previous year. Tape Recording, House  
3 Business and Consumer Affairs Committee, SB 930, June 19, 1979,  
4 Tape 28, Side 1 (statement of Lee Ridgeway). The Committee  
5 adopted amendments that did not substantially change the provision  
6 at issue, and the Vice-Chair moved that it be forwarded to the  
7 floor with a "do-pass" recommendation. The motion carried  
8 unanimously. Minutes, House Business and Consumer Affairs  
9 Committee, SB 930, June 19, 1979, 3. The bill was passed in both  
10 houses but vetoed in 1979. It was enacted the following year, in  
11 the 1980 Special Session.

12 Based on the foregoing information from the legislative  
13 record, I can discern four points that were made known to the  
14 committees that deliberated the bill and approved it. (1)  
15 Franchise agreements are business transactions that should be  
16 respected, but limited court review may be invoked to protect  
17 against an abuse of power in a termination decision. (2) The types  
18 of abuse of power contemplated included coercive business  
19 practices of franchisors, such as contract abuses to which  
20 franchisees might be susceptible to because of a lack of  
21 bargaining power. (3) The bill provides a procedural protection  
22 by allowing the franchisee an opportunity to ask a court to  
23 determine whether "good cause" supports a franchisor's termination  
24 decision. (4) The "good cause" determination is based on an  
25 examination of nonexclusive list of factors and any other relevant  
26 considerations that might reveal the types of coercive practices  
27 that the statute was designed to deter.

28 I note that the legislative discussions concerning the  
13 Opinion and Order

1 court's role do not indicate that the court must allocate equal  
2 weight to each of the listed factors. Although it is clear that  
3 the drafters intended that each would receive some consideration  
4 by the court, they also emphasize that the court should consider  
5 any other factors that bear on the question of whether coercive  
6 practices influenced the termination decision. Necessarily, then,  
7 the court must consider, within the context of the relationship  
8 between the franchisor and franchisee, any factors that might  
9 indicate coercion and assign appropriate weight to those factors  
10 when determining whether the termination bespeaks a practice that  
11 the statute seeks to deter.

12 On the record before the court, the application of the  
13 factors to the facts of this case is straightforward. As an  
14 initial matter, the abuses of power that the statute was drafted  
15 to deter are absent in this case. There is no indication that  
16 plaintiff is the object of any coercive business practices.  
17 Rather, the record indicates that AHM and ECI had a profitable  
18 mutual relationship for a time prior to Wing's convictions. His  
19 license was thereafter revoked, and he was forced to relocate  
20 beyond the city line. He did so without permission from AHM and  
21 in violation of the Sales and Service Agreement. But for Wing's  
22 own breach of the agreement, there is no indication that the  
23 franchise would have been terminated.

24 I turn now to a consideration of the statutory factors,  
25 beginning with (2)(f), which weighs very heavily in AHM's favor.  
26 Under that subsection, the court considers "[t]he failure of the  
27 franchisee to substantially comply in good faith with those  
28 requirements of the franchise which are reasonable." There is no

1 dispute of fact concerning whether Wing was convicted of felonies  
2 related to his business;<sup>5</sup> he purchased a stolen motorcycle,  
3 understood that serial numbers had been intentionally removed,  
4 involved an employee in its disassembly, and implicated ECI in the  
5 transaction by testifying at the criminal proceeding that his  
6 store purchased the items. Further, the record indicates that  
7 Wing and ECI failed to comply with critical components of the  
8 mutually agreed-upon Sales and Service contracts, which required  
9 Wing to refrain from criminal activity that might affect AHM's  
10 reputation, maintain a business license, and acquire permission  
11 before relocating the dealership. Wing's actions demonstrate  
12 absolute disregard for AHM's licensing and relocation  
13 requirements. His convictions bespeak bad faith in dealings with  
14 potential customers, employees, the police, and those dealings  
15 endanger the reputation of his supplier, AHM.

16 Concerning subsection (2)(e), "[t]he qualifications of  
17 management, sales and service personnel to provide the customer  
18 with reasonably good service and care of new motor vehicles," I  
19 note that Wing's own conviction and license revocation cut heavily  
20 against his qualifications to serve as an AHM franchisee.

21 Although the remaining factors do not weigh as much against  
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25 <sup>5</sup> I note that Wing's felonies were reduced to misdemeanors for  
26 purposes of sentencing, but this does not change the factual point  
27 that he was convicted of felony crimes. See State v. Smith, 677  
28 P.2d 715, 716 (Or. App.), aff'd, 691 P.2d 89 (Or. 1984) ("[A]  
person is 'convicted' of the crime of which he or she is found  
guilty. Entry of judgment of conviction is simply another  
matter.").

1 plaintiff, neither do they rescue his case.<sup>6</sup> Under subsection  
2 (2)(a), I am to consider "[t]he amount of business transacted by  
3 the dealer as compared to the amount of business available to the  
4 dealer." Here, I note that although ECI's ranking remained high  
5 for a period even after Wing's conviction, its performance  
6 decreased in recent months and has plummeted in Honda's national  
7 rankings, due in part to a general market downturn. Concerning  
8 subsections (2)(b) and (2)(c), "[t]he investment necessarily made  
9 and obligations necessarily incurred by the franchisee in the  
10 performance of the franchise," and the "permanency of the  
11 investment," plaintiff asserts that he has spent over one million  
12 dollars on the Sutherlin dealership. As AHM explains, this  
13 statement does not segregate plaintiff's investments for other  
14 ongoing franchises in the Sutherlin location. Even assuming  
15 (giving the plaintiff the benefit of favorable factual inferences)  
16 that significant funds supported the Honda franchise in Sutherlin,  
17 the investment was ill-advised because the relocation was  
18 unauthorized.

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20 <sup>6</sup> A sports analogy may help illustrate this point. Suppose  
21 the legislature wanted to protect Major League Baseball players  
22 from being cut absent "good cause" and lists certain nonexhaustive  
23 factors for the court to consider: e.g., batting average, RBI  
24 production, home run total, stolen bases, and number of errors  
25 committed. A team in the National League (which does not have the  
26 designated hitter rule) decides to cut a player who ranks at or  
27 above average in most of the listed categories but is far below  
28 average on defense. Management accordingly decides that the  
player's defensive shortcomings outweigh his offensive production  
and thus waives him. Under such a statutory scheme, while the  
court may be called upon to consider all the factors, the court  
should not substitute its personal opinion in the matter nor rotely  
assign equal weight to each factor as if some mathematical equation  
were implicated. It is enough to conclude that management's  
decision was not arbitrary, i.e., that the player's defensive  
liabilities provide "good cause" for the decision.



1           Concerning subsection (2)(d), "[t]he adequacy of the  
2 franchisee's new motor vehicles sales and service facilities,  
3 equipment and parts," plaintiff contends that the Sutherlin  
4 facility is more than adequate because it is more spacious than  
5 his Roseburg location. For purposes of addressing defendant's  
6 summary judgment motion, the court accepts this representation as  
7 true. Nonetheless, as explained previously, the factors are not  
8 entitled to equal weight in the analysis.

9           Measured along with the remaining factors, Wing's  
10 convictions, which involve crimes of dishonesty involving his  
11 business, and his failure to comply with the agreed-upon and  
12 reasonable terms of the franchise agreement, justify termination.  
13 The court will not force AHM to continue its business relationship  
14 with Wing, whose convictions adversely affect AHM's reputation and  
15 violate the Sales and Service Agreements. Further, requiring the  
16 business relationship to continue after Wing's decisions to  
17 continue his Honda sales and repair after revocation of his  
18 license and the unauthorized relocation would eviscerate material  
19 provisions of the contracts to which Wing agreed and put this  
20 court in the business of regulating franchise relationships  
21 without respect to reasonable business expectations. Such an  
22 action would clearly exceed the legislative intent underlying Or.  
23 Rev. Stat. § 650.140, which was to protect franchisees from  
24 coercive and abusive trade practices. In sum, "good cause" exists  
25 for the termination of the Sales and Service agreements under Or.  
26 Rev. Stat. § 650.140(2).

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28                                   CONCLUSION

1 Defendant's motion for summary judgment (#31) is granted.  
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4 IT IS SO ORDERED.  
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6 Dated this 25<sup>th</sup> day of April, 2008.  
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10 THOMAS M. COFFIN  
11 United States Magistrate Judge  
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